

FILED

FEB 09 2018

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

Clerk, U.S. District Court
District Of Montana
Missoula

ROBERT WADE DEAN,

CV 17-00064-BU-BMM-JCL

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

JAMIE MICHELS and KATIE
DONATH,

Defendants.

Plaintiff Robert Dean, a prisoner proceeding without counsel, filed a Complaint alleging Defendant violated his federal constitutional right to privacy by disclosing certain of his medical records to other individuals and entities within the Department of Corrections without his authorization. (Complaint, Doc. 2 at 1.)

Pursuant to 28 U.S.C. §§ 1915, 1915A the Court screened the Complaint and determined that as currently plead it failed to state a federal claim upon which relief can be granted. By Order entered September 19, 2017, the Court afforded Dean an opportunity to file an amended complaint by October 20, 2017. (Doc. 6.) He failed to do so.

On November 9, 2017, the Court entered its recommendation that this action be dismissed for the reasons stated in the September 19, 2017 Order. On November 20, 2017, Dean moved for an extension of time to prosecute this case because he had difficulty sending and receiving mail at the Missoula County Detention Facility. He indicated that he would be released from custody soon and will be able to send and receive mail from his new address.

The Court construed Dean's motion as requesting additional time within which to file his amended pleading. The Court withdrew its prior Findings and Recommendations and granted the motion for extension giving Dean until January 19, 2018 to file his amended pleading. Although Dean filed a notice of change of address on January 5, 2018 (Doc. 16) he has not filed an amended pleading.

Accordingly, for the reasons set forth in this Court's September 19, 2017 Order (Doc. 6), the Court finds that Dean failed to state a federal claim upon which relief may be granted and therefore issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.

4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Dean failed to state a claim upon which relief may be granted.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

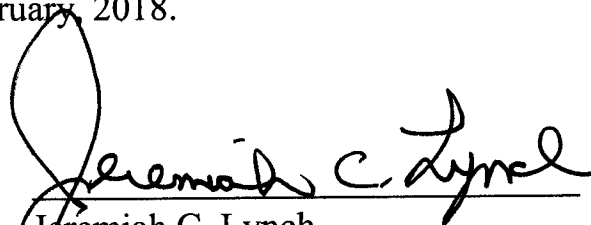
Dean may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Dean is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.

until entry of the District Court's final judgment.

DATED this 9th day of February, 2018.



Jeremiah C. Lynch
United States Magistrate Judge